No. 93-1039

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

THE STATE OF COLORADO,
Petitioner,
vs.
LESLIE BENJAMIN LaFRANKIE,
Respondent.

REPLY BRIEF

On Petition for Writ of Certiorari
to the Colorado Supreme Court
Case No. 92SA476

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THE ISSUE PRESENTED IN THE PETITION WAS FULLY PRESSED AND PASSED BELOW.

Respondent asserts that "Petitioner's argument concerning the correct definition of custody for *Miranda* was not pressed or passed below." (Brief in Opp. at i; 4-7; and 54). This assertion is simply wrong.

Petitioner presented arguments to the Colorado Supreme Court in its Opening Brief, Reply Brief, and Supplemental Authorities.[1] The main issue presented was that the trial court failed to determine custody through consideration of whether the police had

[1] Because the record has not yet been forwarded to the United States Supreme Court, copies of these court documents have been lodged with the Clerk.

imposed restraints "of the degree associated with formal arrest" under the analysis established by this Court in *Beheler v. California*, 463 U.S. 1121 (1983), *Minnesota v. Murphy*, 465 U.S. 420 (1984), and *Berkemer v. McCarty*, 468 U.S. 420 (1984).[2] This issue is identical to the issue presented in this Petition.

The Colorado Court found the interrogation to be custodial without reference to the analytical framework established by this Court, and argued by the Petitioner, for making that determination. This willingness of the Colorado Supreme Court to determine custody while disregarding this Court's decisions on how that determination is to be made demonstrates the great need for this petition to be granted so that this serious error of substantive omission can be corrected.

RESPONDENT SEEKS TO EXPAND *MIRANDA* THROUGH A DETERMINATION OF CUSTODY BASED UPON SUFFICIENT COERCION, BUT IT IS "CUSTODY" WHICH DEFINES THE SITUATIONS TO WHICH *MIRANDA* IS LIMITED.

Respondent argues that since concerns about coercion in the custodial setting underlie *Miranda*, the existence of custody itself can be determined from the degree of coercion which might arise from the interrogation.[3] (Brief in Opp. at 38-54). *Miranda* is premised,

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[2] See particularly pages 10-12 and 13-21 of the Opening Brief, pages 1 and 3-10 of the Reply Brief, and both pages of the Supplemental Authorities. For the Court's convenience, a few excerpts from the briefs submitted below are included in Appendix D to demonstrate the issue which was presented.

[3] In discussing the two components of custody and interrogation, Respondent argues that "... in a setting where one component is by itself insufficient to warrant *Miranda* warnings but the other is highly compelling, the higher component may compensate for the 'shortcomings' of the

however, on the coercion inherent in a custodial setting, not on coercion in general.

This Court has said, "*Miranda* was grounded squarely in the Court's explicit and detailed assessment of the peculiar 'nature and setting of ... in-custody interrogation.'" *Beckwith v. United States*, 425 U.S. 341, 346 (1976) (quoting *Miranda*). This Court has also emphasized that:

> *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which *Miranda* by its term was made applicable, and to which it is limited.

Oregon v. Mathiason, 429 U.S. 492, 495 (1977). This Court has further explained that custody is "an interrogation environment ... created for no purpose other than to subjugate the individual to the will of the examiner" in which the suspect "is painfully aware that he literally cannot escape a persistent custodial interrogator." *Murphy*, 465 U.S. at 433.

The analysis applied by the Colorado Supreme Court, which the Respondent defends, does not limit *Miranda* in the way this Court

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component that features a lower degree of compulsion. [citation omitted] *Miranda*, then is required whenever both elements aggregately exert on a suspect a certain level of compulsion, even if one element standing along is below that threshold. [citation omitted]" (Brief in Opp. at 46-47). This approach provides no guidance at all to police, who would not know when they begin to question a suspect whether the facts will develop to the point where "both elements aggregately exert on a suspect a certain level of compulsion..." so that a *Miranda* advisement is required. This is a far cry from the bright line *Miranda* and its progeny provide in requiring the proper advisement only when interrogation takes place in custody.

has expressly stated that it is limited. Respondent, like the Colorado Supreme Court, would have the word "custody" be an expansive concept which extends to any coercive situation resulting from questioning. "Custody" is, instead, a particular setting in which a person is isolated through the actual assertion by police of domination and control, which literally precludes that person from escaping the questioning. That setting, not the myriad of situations which might seem coercive,[4] defines the limits of the application of *Miranda*.

COURTS ARE DETERMINING CUSTODY THROUGH DIFFERENT LEGAL PRINCIPLES WHICH HAVE SUBSTANTIALLY DIFFERENT MEANINGS.

Respondent argues that "the phraseology of the definition of custody, within certain bounds, is largely irrelevant" and that "it may well be more important to a correct resolution that courts apply the objective test than that they state the definition of custody in precisely the same way." (Brief in Opp. at 26). He asserts that the various formulations applied by different courts for the determination of custody are merely "parallel definitions of 'custody'" with no differences in meaning and no different effect in application[5] (Brief in Opp. at 25-26). His approach demonstrates the erroneous

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[4] Coercion in general should be analyzed as an issue of voluntariness under the due process clause. Although Respondent seeks to paint the facts of the interview in the most ominous light (Brief in Opp. at 1-3 and 49-51), the trial court found that the interview was handled in a low-key, truthful style, without promises or threats, and it was not handled in a manner calculated to overbear the Respondent's will, so that Respondent's responses were not involuntary (Pet. App. at B4-B5).

[5] Respondent acknowledges three "categories" of approaches to the meaning of "custody": "in custody or otherwise deprived of his freedom of action in any significant way;" "restraint on freedom of movement of the degree associated with formal arrest;" and "whether the individual being question would not be free to leave." (Brief in Opp., pp. 25-26).

tendency, followed in Colorado[6] and elsewhere, to view this constitutional issue predominantly as a matter of fact, to be determined unguided by a meaningful and consistent legal principle.[7]

Rather than being "parallel definitions" of custody, the various formulations concerning custody should work together, because each expounds on the meaning of custody. These phrases together build a full description of the important, but limited, situations in which *Miranda* comes into play.[8] The other descriptions of custody are subsumed in the most recent formulation, which focuses on restraints associated with arrest, which this Court has repeated in *Beheler*, *Murphy*, and *Berkemer*. This Court acknowledged as much by calling this focus the "the ultimate inquiry." *Beheler*, 463 U.S. at 1125. Courts are applying these other, partial descriptions in isolation from each other, as different statements of what should be a single controlling legal principle. Some, like the Colorado Court, ignore the "ultimate inquiry" entirely.

When applied alone, these other descriptions of custody lead to different basic assumptions about the purposes of *Miranda* and the nature of custody, to different frames of reference for the analysis

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[6] The Colorado Court said below, "The issue of custody is 'essentially a factual question that involves a trial court's assessment of the credibility of witnesses and the weighing of their testimony.' [citation omitted]" Pet. App. at C-6.

[7] This is not to say the facts are unimportant in the analysis, but only that an emphasis on facts provides no useful direction to the analysis and is no substitute for a controlling legal principle.

[8] These phrases refined "custody" so that it means situations where one has been deprived of his freedom of action in any significant way (*Miranda*) such that he is in "custody" (*Beckwith* and *Mathiason*) as a result of formal arrest or the imposition by police of restraints on freedom of movement of the degree associated with formal arrest (*Beheler*, *Murphy*, and *Berkemer*) so that he is literally not free to leave the questioning (*Murphy*).

itself, to different facts chosen for consideration and emphasis, and to different results. As the most obvious example, the outcome in *Berkemer v. McCarty* would have been different had the test for custody applied by this Court been whether one is "not free to leave" instead of whether one's "freedom of action is curtailed to a 'degree associated with formal arrest.'" Contrary to Respondent's assertion, the words used to express the guiding legal principle do matter. This case is an excellent vehicle for this Court to clarify the controlling legal principle.

RESPONDENT DEFENDS THE "OBJECTIVE" AND "TOTALITY OF THE CIRCUMSTANCES" APPROACHES TO THE FACTS, WHICH ARE NOT CHALLENGED IN THE PETITION.

Much of Respondent's Brief in Opposition is misdirected. Respondent argues that the Petition seeks to modify or reinterpret "the long standing totality of the circumstances test." (Brief in Opp. at 5). That is not an issue presented in the Petition.

Likewise, Respondent argues at length that the Court below and most other jurisdictions "apply the objective standard" or "the longstanding reasonable person test" to the *Miranda* custody determination and that Petitioner ignores this fact in seeking "to modify or more probably replace" those approaches (Brief in Opp. at 4; 15; 24-35; 40-41; 54). The Petitioner does not, however, challenge the objective nature of the analysis for the determination of custody.[9] Instead, the issue raised here is the proper frame of reference against which the objectively apparent facts are to be

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[9] To the contrary, Petitioner argued that the various incorrect approaches to custody, including that followed in Colorado, lead to inappropriate consideration of subjective matters in violation of the proper objective approach, and that this fault is demonstrated by the decision below (Pet. at 19-21).

examined and the proper goal toward which that analysis is to be directed.

CONCLUSION

The arguments in the Brief in Opposition confirm the existence of substantial confusion and error in the area of determining custody for purposes of *Miranda*. This Petition must be granted to correct the deviations of the Colorado Supreme Court and other courts from the doctrine which this Court has developed for the correct and limited application of *Miranda*, and thereby to provide much needed clarification and consistency for this important issue.

Respectfully Submitted,

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APPENDIX D

(Excerpts from the Petitioner's Argument from the Record)

People's Opening Brief at 16-17:

"Under *Miranda* and its progeny, however, to be 'deprived of his freedom in a *significant* way' one must have been placed in custody through restraints to a 'degree associated with formal arrest.' Without consistent recognition of this doctrinal basis established by the U.S. Supreme Court for the determination of whether there is a custodial interrogation, there is no constitutionally meaningful context for police, prosecutors, or trial court to consider the circumstances."

People's Opening Brief at 18:

"The common thread in these controlling federal decisions is that the requirements of *Miranda* only come into play when the authorities conduct their interrogation after placing restraints on the defendant which curtail his freedom of action to a degree associated with formal arrest."

People's Opening Brief at 21:

"When trial courts are so free to weigh the implications of circumstances to discover 'any significant restriction on freedom of movement,' without regard to the context of actual custody in which *Miranda* was based, police are given no guidance on when they must Mirandize a suspect, nor do prosecutors or judges have any guidance on when custody exists. *Miranda* and its progeny demonstrate that it is custody imposed through 'restraints on freedom of movement to a degree associated with formal arrest' which triggers the requirements of *Miranda*."

People's Reply Brief at 6-7:

"The analysis for determining whether an interrogation is custodial is fact specific, and must look to the totality of the circumstances on a case by case basis; however, the context for that analysis is the determination of whether the police have imposed 'significant restraints,' which means 'restraints on freedom of movement of the degree associated with formal arrest,' not whether the court can conceive of any lesser type of restraint from the circumstances.

People's Reply Brief at 7:

"It is possible ... for custody to arise without a formal arrest. However, the U.S. Supreme Court has in fact required formal arrest or restraints comparable to those associated with formal arrest for there to be custody. In this way it has given meaning to 'significant restraints' under *Miranda's* definition of custodial interrogation."

People's Supplemental Authorities at 1:

"The U.S. Supreme Court used restraints 'associated with formal arrest' in cases after *Miranda* to clarify the degree of restraints contemplated by the phrase 'deprived of freedom of action in any significant way' in *Miranda* itself."

People's Supplemental Authorities at 2:

"Restraints 'of the degree associated with formal arrest' are required for there to be custody in the absence of formal arrest. This demonstrates the high degree of police domination -- comparable to that effecting formal arrest -- which is necessary before there is a

significant enough restraint on one's freedom of action to trigger the advisement required under *Miranda's* definition of custodial interrogation."